

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

WESTMARK HOTELS AND INNS d/b/a  
WESTMARK HOTEL AND CONFERENCE  
CENTER, FAIRBANKS, a wholly-owned subsidiary  
of HOLLAND AMERICA LINE WESTOURS, a  
Washington Corporation<sup>1</sup>

Employer

and

Case 19-RC-13990

LABORERS LOCAL 942, LABORERS  
INTERNATIONAL UNION OF NORTH  
AMERICA, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>1</sup> The name of the Employer appears as amended at hearing.

<sup>2</sup> The brief due date was extended to July 20, 2000. The Union filed no brief. The Employer attempted to file a brief by facsimile, contrary to Board Rule 102.114(g). Accordingly, no brief was timely filed.

All employees employed by the Employer at its Westmark Hotel and Conference Center, 813 Noble Street, Fairbanks, Alaska, facility, including front desk employees, room attendants, housekeeping supervisor, gift shop employees, laundry employees, bell help/drivers, bell captain, kitchen employees, chefs, sous chefs, dinner/broiler cooks, restaurant servers, banquet servers, bus persons, banquet and housekeeping housemen, catering coordinator, host/hostess/cashiers, bartenders, dishwashers, maintenance help/gardeners, and janitors; but excluding all office clerical employees, administrative employees, and guards, and supervisors as defined by the Act.

The Employer is engaged in the operation of several hotels in the State of Alaska, including the Westmark Hotel and Conference Center in Fairbanks (“the Hotel”), the facility involved herein. The parties stipulated that the appropriate unit includes all employees except administrative and office clerical employees. The sole issue in the hearing is the timing of the election.

The hotel operates on a year-around basis. Peak occupancy occurs between Memorial Day and Labor Day each year. The hotel retains a “core” group of employees throughout the year, and hires additional employees on a seasonal basis for the summer months. Most of the latter are college students. It appears that, overall, the employment level approximately doubles from the minimum in January to the peak in June.

The hotel prefers to rehire former employees, to avoid the necessity of training new employees. To this end, each spring, the Employer sends letters to all former employees inviting them to return. In addition, the Employer offers returning employees a free employee cruise on a space-available basis aboard a Holland-America cruise ship at the completion of a second season of employment.

Evidence in the record shows that of approximately 115 or 142 employees<sup>3</sup> as of June 30, 2000, approximately 46 were “core” employees, that is, employees who have been working continuously since at least the end of 1999. There were 25 hires between January 1 and April 30, 2000. Presumably, there were many more hires thereafter to staff for the summer. Approximately 23 employees who were hired in 2000, after January 1, but before the hearing, had worked for the hotel in previous years; some have returned for as many as four seasons. College students start leaving to return to school as early as August 15. Additional hires must then be made locally to replace them in order to staff the balance of the season. There is also a period of heavy turnover from mid-May to the beginning of June, as new employees try out and reject their positions and move on.

There is no dispute as to the eligibility of seasonal employees. The Employer takes the position that because of an historical pattern of high turnover, many of the current seasonal employees will not be returning in 2001, that the employees who will be most affected by the outcome of the election will not be hired until the peak season in 2001, and that it would therefore be more appropriate to hold the election on or about June 15, 2001. Petitioner opposes any such delay, and seeks an immediate election.

The Board has long held that it will not postpone an election in a facility which has a seasonal peak in employment, where substantial operations continue throughout the year. *Baugh Chemical Company*, 150 NLRB 334 (1972); *Sitka Sound Seafoods*, 325 NLRB 685 (1998).

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<sup>3</sup> There are exhibits mentioning approximately 142 “employees,” and 115 employees. I need not resolve this anomaly. Perhaps there was an intended distinction between “employees” and “unit employees.”

Here, the number of “core”, year-round employees, or non-seasonal employees, is substantial – about half of the peak force. The current peak season, while it may begin to ebb within a few weeks, is far from over. In fact, Employer testimony shows that the season is not over by August 15, and that it must fill vacancies left by some summer help that leaves beginning about August 15. This election can easily be conducted by August 20, well in advance of Labor Day, and still in the peak season. To postpone the election until June 2001 would “unduly hamper year-round employees in their enjoyment of their rights under the Act.” *Baugh Chemical*, supra, at 1036. I shall, therefore, direct an election to be conducted forthwith.

As noted, the Employer’s operations vary by season. It “terminates” seasonal employees as the season ends, either as part of voluntary cessation of work, or as what might ordinarily be called a “layoff.” The Employer pro-actively encourages these employees to return the next season. Many, but certainly not all, do. There are many new hires after the summer peak, but before the next season begins. There were, for example, 25 hires alone between January and April 30, 2000. There is still more hiring in late summer to complete the season.

By the time this election is conducted, it is possible some 2000 seasonal employees will have already “terminated.” Given their clear eligibility to return next year, the Employer’s encouragement that they do so, and the substantial number of returns each season of those who worked the previous season, I shall provide for any early-departing seasonal’s eligibility to vote as well. Accordingly, beyond those employees eligible under standard eligibility rules, I shall also deem eligible to vote all Unit employees who worked in at least 8 Sunday-Saturday weeks in 2000, for a total of at least 150 hours, between Memorial Day and Labor Day or their last day of work (whichever comes first), and who are no longer otherwise eligible under the standard formula, and who have not been discharged for cause or otherwise deemed ineligible for recall in the 2001 season. Any who meet these alternate criteria and who have affirmatively stated to the Employer in writing that they will not return for the 2001 season will not be eligible. In this manner, all employees eligible under the standard rules will be eligible, and the voting eligibility of any seasonals who have already left, but who worked a substantial amount during this season, will also be preserved. (There is no indication that there is any substantial number of seasonals who did not work the 2000 season, but worked in the 1999 season, and might well return in the 2001 season.)

No formula is perfect; this one is reasonable, furthers the statutory policies, and will suffice. See *Saltwater, Inc.*, 324 NLRB 343 (1997).<sup>4</sup>

There are perhaps 175 eligibles in the Unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

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<sup>4</sup> No party has suggested any particular formula.

period, except as set forth in the eligibility discussion in the above Decision, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by LABORERS LOCAL 942, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO.

### **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Resident Officer in Anchorage within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Anchorage Resident Office, 222 West 7<sup>th</sup> Avenue, Box #21, Anchorage, Alaska 99513, on or before July 28, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (907) 271-3055. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive

Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 4, 2000.

**DATED** at Seattle, Washington, this 21st day of July, 2000.

/s/ PAUL EGGERT

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Paul Eggert, Regional Director  
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